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13  
14 UNITED STATES DISTRICT COURT  
15 EASTERN DISTRICT OF CALIFORNIA  
16 ROBERT T. MATSUI FEDERAL COURTHOUSE

17 CALIFORNIA SPORTFISHING  
18 PROTECTION ALLIANCE,

19 Plaintiff,

20 v.

21 KATHLEEN ALLISON, in her  
22 official capacity as Secretary  
23 of the California Department of  
24 Corrections and Rehabilitation,  
Defendants.

25 COUNTY OF AMADOR, a public  
agency of the State of  
California,

Plaintiff,

v.

KATHLEEN ALLISON in her  
official capacity as Secretary  
of the California Department of  
Corrections and Rehabilitation;  
PATRICK COVELLO in his official  
capacity of Warden of  
California Department of  
Corrections and Rehabilitation  
Mule Creek State Prison,  
Defendants.

Case No. 2:20-cv-02482-WBS-AC

DECLARATION OF RICHARD  
MCHENRY IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
SUMMARY ADJUDICATION

No. 2:21-cv-0038-WBS-AC  
Date: August 22, 2022  
Time: 1:30 p.m.  
Court: 5

Action Filed: Jan. 7, 2021  
Trial Date: April 18, 2023

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14 COUNTY OF AMADOR  
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1       I, Richard McHenry, make this declaration from personal  
2 knowledge. If called, I could and would testify competently as  
3 follows:

4       1. I am now, and have been since at least 2008, a member  
5 of California Sportfishing Protection Alliance ("CSPA"), the  
6 plaintiff in the above-captioned matter. I have served as the  
7 Director Compliance since 2008 and have served on CSPA's board of  
8 directors since June 2020.

9       2. I am a registered Civil Engineer in California,  
10 graduating from California State University at Sacramento in May  
11 of 1985. I was employed by the State and Regional Water Quality  
12 Control Boards from 1986 through 2008. My principal  
13 responsibility was water quality permitting and enforcement in  
14 the National Pollution Elimination System (NPDES), where I served  
15 as a Senior Engineer for several years, supervising the work of  
16 other engineers and scientists. I ended my career at the State  
17 Water Resources Control Board ("State Board"), Office of  
18 Enforcement, as a senior water quality compliance specialist.

19       3. CSPA has approximately 2,000 members who use the  
20 Sacramento-San Joaquin Delta (the "Delta") and its upstream  
21 waters, including the Mokelumne and Cosumnes Rivers, Dry Creek,  
22 and Mule Creek, for recreational, scientific, educational and  
23 conservation purposes, including fishing, boating, kayaking,  
24 sailing, wildlife observation, photography, hiking, and aesthetic  
25 enjoyment on a continuing and ongoing basis.

26       4. CSPA is a nonprofit, public benefit corporation  
27 organized under the laws of the State of California. The purposes  
28 of the organization include promoting the conservation,

1 restoration and enhancement of the State's fishery resources and  
2 the aquatic and terrestrial habitats on which these resources  
3 depend, promoting the preservation of land and aquatic habitat  
4 for scientific, historic, recreational, educational,  
5 agricultural, scenic or open space opportunities and promoting  
6 the social welfare through the protection, enhancement and  
7 restoration of the quality of sportfishing in California.

8       5. CSPA acts on behalf of its members to protect their  
9 interests in using and enjoying the Delta and its tributaries.  
10 CSPA regularly communicates with state and federal agencies,  
11 including the State Board, the Central Valley Regional Water  
12 Quality Control Board ("Regional Board"), the California  
13 Department of Water Resources ("DWR"), the U.S. Bureau of  
14 Reclamation ("BOR"), the U.S. Environmental Protection Agency  
15 ("EPA"), the U.S. Army Corps of Engineers ("COE"), the Federal  
16 Energy Regulatory Commission ("FERC"), the California Department  
17 of Fish & Wildlife ("DFW"), the U.S. Fish & Wildlife Service  
18 ("USFWS"), and the National Marine Fishery Service ("NMFS").  
19 CSPA's activities include providing comments on proposed  
20 regulatory action and gathering and disseminating information  
21 regarding the health of the Delta, its tributaries, and fishery  
22 resources.

23       6. For example, CSPA submits formal comments, complaints,  
24 protests, and petitions and participates in evidentiary  
25 proceedings concerning water rights, public trust, water  
26 transfers, water quality control plans, and unreasonable use and  
27 method of diversion issues before the State Board. CSPA has filed  
28 more than twenty-five formal "public trust" and "unreasonable use

1 complaints" with the State Board against numerous water agencies  
2 including BOR and DWR. CSPA has filed formal protests against BOR  
3 and DWR regarding petitions for time extension of various Central  
4 Valley Project and State Water Project water rights and  
5 participated in an evidentiary proceeding regarding water rights  
6 and the appropriation of water from the Sacramento River by the  
7 cities of Woodland and Davis.

8       7. CSPA submits comments, complaints, petitions and  
9 interventions and participates in formal proceedings before the  
10 FERC regarding hydroelectric project licenses that affect  
11 fisheries. CSPA is a steering committee member of the California  
12 Hydropower Reform Coalition and has been involved in several FERC  
13 proceedings on the Mokelumne River.

14       8. CSPA reviews, submits comments and participates in  
15 administrative proceedings before both the State Board and  
16 Regional Board regarding proposed National Pollutant Discharge  
17 Elimination System ("NPDES") Permits, 401 Certifications, Waste  
18 Discharge Requirements ("WDR") or waivers of WDRs issued pursuant  
19 to state and federal clean water statutes. For example, CSPA  
20 submitted extensive comments and testimony to the State Board  
21 regarding protection of in-stream resources during the Emergency  
22 Drought Hearings and the Bay Delta Hearings (1995, 1999, and  
23 2005) and successfully litigated the State Board's D-1641  
24 decision that implemented the 1995 Water Quality Control Plan for  
25 the Delta. CSPA also submitted comments and expert testimony  
26 during the State Board's 2010 Delta Flow Hearings. CSPA  
27 participated, as a party of record, in the 2005 State Board Cease  
28 and Desist Order against DWR and BOR for violation of the

1 salinity objective in the South Delta. CSPA's successful lawsuit  
2 against the State Board for its failure to develop sediment  
3 quality objectives for the Delta resulted in the State Board  
4 allocating more than six million dollars to develop sediment  
5 objectives.

6       9. CSPA regularly comments on the majority of NPDES  
7 wastewater and storm water permits authorizing discharges of  
8 wastewater or storm water into the Delta and its tributaries. On  
9 a number of occasions, the State Board has agreed with CSPA and  
10 remanded permits back to the Regional Board for revision. On  
11 other occasions, CSPA has had to initiate litigation to secure  
12 compliance with regulatory requirements.

13      10. CSPA reviews, analyzes, and submits detailed comments  
14 on California Environmental Quality Act and National  
15 Environmental Policy Act documents pertaining to projects  
16 affecting the Delta and its tributaries. For example, CSPA  
17 submitted extensive comments on the Environmental Impact Report  
18 ("EIR") and Environmental Impact Statement ("EIS") for DWR's  
19 South Delta Improvement Project and Monterey Plus Agreement  
20 Project and commented on BOR's Two Gates Project. CSPA submitted  
21 detailed comments on the Regional Board's EIR for the revised  
22 irrigated lands program and submitted scoping comments for the  
23 EIR/EIS for the Delta Steward Council's Bay-Delta Plan.

24      11. CSPA reviews and submits comments on biological  
25 opinions, critical habitat designation, streambed alteration, and  
26 Section 404 dredging permits issued by NMFS, USFWS, COE, and DFW.  
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1       12. CSPA monitors actions related to the Delta estuary.  
2 CSPA has been deeply involved in virtually every proceeding  
3 involving the Bay-Delta from the evidentiary hearings in the  
4 1980s through CalFed, Delta Vision, the Bay Delta Conservation  
5 Plan efforts to construct a peripheral canal and the Delta  
6 Stewardship Committee's development of a Delta Plan.

7       13. As a senior Engineer at the Regional Board in the NPDES  
8 Section, I oversaw regulation of Wastewater Treatment Systems in  
9 El Dorado County for several years. This included the Deer  
10 Creek, El Dorado Hills and City of Placerville wastewater  
11 treatment systems and their wastewater discharge to surface  
12 waters. I participated and oversaw inspections of the wastewater  
13 treatment and disposal systems and surface water receiving  
14 streams. Both the Deer Creek and El Dorado Hills wastewater  
15 treatment plant discharges are tributary to the Cosumnes River.  
16 On occasion I inspected water conditions in the Cosumnes River.

17       14. I have visited areas in El Dorado County for  
18 recreational activities, including the community of Ione. I have  
19 participated in organized bicycle rides in the area and enjoyed  
20 the waterways for their scenic values.

21       15. Mule Creek prison did not have NPDES permits during my  
22 tenure at the waterboards. It was regulated by the land disposal  
23 units. Since they were local facilities to the County, I  
24 participated in water board staff discussions regarding  
25 wastewater issues and problems at Mule Creek over the years.

26       16. Working with CSPA over the years, I have received  
27 complaints from neighbors and have read numerous newspaper  
28 articles regarding problematic wastewater discharges to surface

1 waters from the Mule Creek Prison. I have also discussed  
2 enforcement and regulatory issues regarding the prison's  
3 discharges to surface waters with Regional Board staff.

4       17. I believe that eliminating the prison's polluted  
5 discharged to Mule Creek would reduce my concerns about the harms  
6 caused by these discharges to the natural environment and would  
7 increase my enjoyment of the scenic of values of Ione and  
8 downstream watersheds. I am concerned that if the prison's  
9 unlawful discharges of sewage to Mule Creek are not meaningfully  
10 addressed, water quality and habitat in, and the beneficial uses  
11 of, the Mokelumne and Cosumnes Rivers will be significantly  
12 degraded.

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14       I swear under penalty of perjury under the laws of both  
15 California and the United States that the foregoing is true and  
16 correct and that this declaration was executed on June 26, 2022  
17 at Sacramento, California.

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Richard McHenry

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